IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7000 OF 2005

Shri Navnath Bajirao Wagh : Petitioner

V/s.

Shri K.N.Pawar & Ors. : Respondents

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Mr.R.N.Gite for the petitioner.

Mr.M.H.Solkar, Asstt. Govt. Pleader for the respondent nos.2 & 3.

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CORAM : S.A. BOBDE, J.

October 21, 2005.

P.C.

1. The petitioner has challenged the order of the appellate authority under section 152A of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act", upholding the rejection of his nomination papers. The petitioner filed his nomination for contesting election to the Managing Committee of the respondent no.4 society. He claims to have filed his nomination as an O.B.C. candidate only and not from the non-borrowers' constituency. His nomination paper was, however, rejected on 22.9.2005 on the ground that he has

filed his nomination paper from the non-borrowers' constituency and that his proposer and seconder are from the non-borrowers' constituency vide exh.'A'. The appellate Court has observed that the petitioner has filed his nomination form from the non-borrowers' constituency. The appellate court has observed as follows:-

> The Applicant, is proposer and Seconder are from non-borrower group and his nomination is rejected."

There is no dispute that there is only one seat for the non-borrowers' constituency. The appellate Court has also observed that the petitioner did not produce any evidence to show that he belongs to the borrower group. The petitioner's nomination has been rejected on the ground that his name appeared in the voters' list of non-borrower and he cannot file a nomination in the category of OBC group.

2. The learned counsel for the petitioner urged that the petitioner has not filed his nomination form from the non-borrowers' constituency. It is difficult to accept this submission in view of the observations made by the Returning Officer while rejecting the petitioner's nomination form and the observations made by the appellate

Court while upholding the rejection.

3. Mr.Solkar, the learned Asstt. Govt. Pleader for the respondent nos.2 and 3, states that the said respondents require time to file an affidavit disputing the petitioner's claim on facts. The learned Asstt. Govt. Pleader further sates that all the stages of election are over and the polling is tomorrow. However, on the basis of the observations of the appellate Court, the learned Asstt. Govt. Pleader contends that the petitioner is a non-borrower and disputes the claim of the petitioner that he does not belong to the non-borrowers' constituency. This aspect cannot be decided in this Writ Petition. The learned counsel for the petitioner, however, contended that on the basis of the judgement of the learned single Judge of this Court in Mrs.Tarabai Bhimrao Kale v. The Returning Officer (1994 (1) Bom.C.R. 598), sub-section (3) of section 73-C does not prohibit a non-borrower member from being a member of the Managing Committee if he is otherwise entitled to be elected to the reserved category.

4. He further submitted that this Court may exercise its writ jurisdiction in view of the aforesaid decision passed in Mrs.Tarabai's case (supra).

5. Having considered the matter for sometime, it appears that there are disputed questions of fact involved in this matter. Moreover, the petitioner has approached this Court at a belated stage. Mr.Solkar, the learned Asstt. Govt. Pleader, submits that any interference at this stage would not only involve a change in the list of validly nominated candidates but would also involve printing of ballot papers with such list.

6. Notice was issued by this Court on 19.10.2005 and the respondents have appeared and have not been able to file an affidavit. Having regard to the fact that the polling is scheduled tomorrow, I consider it appropriate that the petitioner be relegated to the remedy of an election petition, in accordance with law, after the elections, as may be advised.

7. The Writ Petition is dismissed.

Sd/-

S.A. BOBDE, J.